

**423.355 Online notary public -- Electronic notarization -- Refusal to perform notarial act -- Use of communication technology -- Registration -- Administrative regulations -- Application of state law.**

- (1) An online notary public:
  - (a) Shall be commissioned as a notary public pursuant to KRS 423.300 to 423.455 and has the powers and duties of a traditional notary public as provided by KRS 423.300 to 423.455;
  - (b) May perform notarial acts as provided by KRS 423.300 to 423.455 in addition to performing electronic notarizations; and
  - (c) May, upon registration with the Secretary of State as an online notary public pursuant to KRS 423.390, perform electronic notarizations authorized under this section.
- (2) An online notary public may perform an electronic notarization provided the online notary public is physically located in this state while performing the notarial act and if:
  - (a) The online notary public has:
    1. Personal knowledge of the identity of the individual pursuant to KRS 423.325; or
    2. Satisfactory evidence of the identity of the individual pursuant to KRS 423.325(3); and
  - (b) At the time of electronic notarization:
    1. The individual appearing before the online notary public is located within this state, or elsewhere within the geographic boundaries of a state of the United States; or
    2. The individual is located outside the United States and:
      - a. The individual confirms to the online notary public that the record is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity located in the territorial jurisdiction of the United States, or relates to property located in the United States, or relates to a transaction substantially connected to the United States; and
      - b. To the online notary public's actual knowledge, the act of making the statement or signing the record is not prohibited by the jurisdiction in which the individual is located.
- (3) In addition to the authority of a notary public to refuse to perform a notarial act pursuant to KRS 423.330, a notary public may refuse to perform a notarial act under this section if the notary public is not satisfied that a notarial act performed would conform with subsection (2)(b)2. of this section.
- (4) If a notarial act involves a statement made in or a signature executed on an electronic record by an individual by means of communication technology, the certificate of notarial act required by KRS 423.360 shall indicate that the individual making the statement or signing the record appeared before the online notary public

by means of communication technology.

- (5) For each electronic notarization, the online notary public shall:
  - (a) Include, in addition to the journal entries required under KRS 423.380, an indication of whether an individual making a statement or executing a signature which is the subject of the notarial act appeared before the online notary public in the notary's physical presence or by means of communication technology;
  - (b) Create a complete recording of the conference session containing the audio-video communication between the online notary public and individual appearing before the online notary public, in accordance with the standards adopted under subsection (7) of this section and KRS 423.415; and
  - (c) Maintain the recording described by paragraph (b) of this subsection for at least ten (10) years after the date of the applicable transaction or proceeding or for the period of retention of a notary public's journal pursuant to KRS 423.380, whichever is longer.
- (6) Before an online notary public performs any electronic notarizations under this section, the online notary public shall register with the Secretary of State pursuant to KRS 423.390.
- (7) The Secretary of State may promulgate administrative regulations regarding the performance of electronic notarizations. The administrative regulations may:
  - (a) Prescribe the means of performing a notarial act involving communication technology;
  - (b) Establish standards for communication technology and the process of credential analysis and identity proofing;
  - (c) Establish procedures for the requirements of providers of communication technology; and
  - (d) Establish standards and requirements for the retention of a video and audio copy of the performance of a notarial act.
- (8) Regardless of the physical location of the individual at the time of the notarial act, the validity of an electronic notarization performed by an online notary public commissioned in this state shall be determined by applying the laws of this state.
- (9) An online notary public shall take reasonable steps to ensure that:
  - (a) Any registered device or credential used to create an electronic signature is current and has not been revoked or terminated by the device's or credential's issuing or registering authority;
  - (b) The audio-video communication used in an electronic notarization is secure from unauthorized interception or use;
  - (c) A backup exists for all information pertaining to an electronic notarization required to be kept by administrative regulations promulgated pursuant to subsection (7) of this section and KRS 423.415; and
  - (d) The backup described by paragraph (c) of this subsection is secure from unauthorized use.

**Effective:** January 1, 2020

**History:** Created 2019 Ky. Acts ch. 86, sec. 12, effective January 1, 2020.